

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA GAMING CONTROL BOARD**

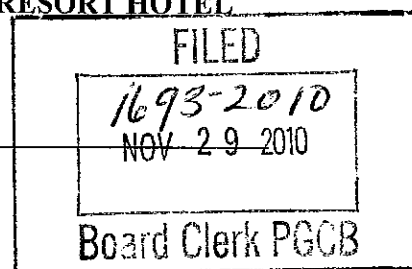
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**In Re: Application of Woodlands Fayette, LLC for a Category 3 Slot Machine License**

**Docket No. 1366-2**

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**WOODLANDS FAYETTE, LLC'S  
POST HEARING BRIEF IN SUPPORT OF ITS APPLICATION  
FOR A CATEGORY 3 LICENSE IN A WELL-ESTABLISHED RESORT HOTEL**



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Dated: November 29, 2010

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## I. INTRODUCTION

Woodlands Fayette, LLC (“Nemacolin”) is one of four applicants for one available Category 3 license (the “Application”). As set forth below, Nemacolin has established by clear and convincing evidence not only that it is eligible and suitable for licensure, but that – in contrast to the three other applicants – awarding a license to Nemacolin would best serve the legislative intent of the Pennsylvania Race Horse Development and Gaming Act (the “Act”), 4 Pa. C.S. § 1101 *et seq.*

As expressly stated by the General Assembly in the Act itself:

The authorization of limited gaming is intended to enhance the further development of the tourism market throughout this Commonwealth, including, but not limited to, year-round recreational and tourism locations in this Commonwealth. 4 Pa. C.S. § 1102(6).

This legislative intent is manifest in the creation of the Category 3 license reserved for certain “well-established resort hotels.” 4 Pa. C.S. § 1305(a)(1). As the Pennsylvania Gaming Control Board (the “Board”) succinctly explained last year to the Supreme Court of Pennsylvania:

[R]ather than seeking applicants who desired, first and foremost, to run a casino, **the General Assembly clearly established Category 3 licenses . . . to create an amenity for the resorts winning licenses, thereby increasing the flow of tourism to those facilities and, in turn, into the Commonwealth – a goal of the Act.**<sup>1</sup>

Awarding the Category 3 license to Nemacolin would best serve this salutary goal. The record is clear that Nemacolin Woodlands Resort is a well-established, five star destination resort with a host of premier amenities unparalleled in this Commonwealth. As illustrative examples, Golf Digest ranks one of Nemacolin’s two golf courses in the top 100 courses and Condé Nast Traveler ranks the Woodlands Spa as the ninth best in the country. Also, Nemacolin Woodlands Resort is now “one of only six resorts in the entire world to offer

both five-star lodging and dining on the same property.” (Nemacolin Tr. 19:19-20:2 [Plummer]).<sup>2</sup> With this breadth and quality of amenities, Nemacolin Woodlands Resort competes nationally with other resorts from Florida to California and leaves its competitors for the Category 3 license miles behind. (Nemacolin Tr. 23:14-23:22 [Plummer]). In short, there is no comparison between Nemacolin and the other applicants.

As Nemacolin has established through its experts, adding a casino amenity to the existing mix of amenities at Nemacolin Woodlands Resort would increase the flow of tourism to Nemacolin and to the Commonwealth as a whole<sup>3</sup> while generating more new gaming revenue for the Commonwealth and having a materially smaller impact upon current licensees than would any competing applicant. Moreover, of the other applicants, one proposes a casino barely 15 miles away from an existing Category 2 facility that is underperforming (Bushkill Group, Inc. or “Bushkill”) and the other two propose to leverage a Category 3 license to create resorts that do not currently exist and are therefore not well-established (Mason-Dixon Resort, L.P. or “Mason-Dixon” and Penn Harris Gaming, L.P. or “Penn Harris”). In addition, Penn Harris fails to meet the baseline 275 room requirement under the Act and is clearly ineligible for licensure.<sup>4</sup> Accordingly, Nemacolin should be awarded the Category 3 license.

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(...continued)

<sup>1</sup> Brief of Respondent in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Bd.*, No. 106 MM 2009 (Pa.), at 23 (emphasis added).

<sup>2</sup> References to “Nemacolin Tr.,” “Mason-Dixon Tr.,” “Penn Harris Tr.,” and “Bushkill Tr.” are to the transcript of the respective applicant’s licensing hearing.

<sup>3</sup> More than 60% of Nemacolin’s guests come from outside Pennsylvania, with visitors from 44 states in 2009 alone. Nemacolin’s top market is the Baltimore / Washington, D.C. metropolitan area. (Nemacolin Tr. 23:22-24:3 [Plummer]). With the addition of the gaming amenity, Nemacolin projects 350,000 additional visitors to the Laurel Highlands region and 30,000 additional room nights at Nemacolin Woodlands Resort on an annual basis. (Nemacolin Public Input Hearing Tr., September 8, 2010 32:15-19 [Plummer]).

<sup>4</sup> With respect to Penn Harris’s failure to meet the baseline eligibility requirements in the Act, *see* Mountainview Thoroughbred Racing Association’s Post Hearing Brief in Opposition to the Application Filed by Penn Harris Gaming, L.P. for a Category 3 Slot Machine License, Docket 1366-2, §§ III-V (regarding eligibility and the recreational vehicles).

**II. NEMACOLIN HAS DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT IT IS ELIGIBLE FOR CATEGORY 3 LICENSURE.**

Nemacolin has satisfied each and all of the eligibility requirements for a Category 3 license under Section 1305(a) of the Act. Nemacolin has demonstrated that:

- (i) Neither Nemacolin nor its affiliate, intermediary, subsidiary or holding company has applied for or been approved or issued a Category 1 or 2 license;
- (ii) Nemacolin is seeking to locate a Category 3 facility “in a well-established resort hotel having no fewer than 275 guest rooms under common ownership and having substantial year-round recreational guest amenities;”
- (iii) Nemacolin is a wholly owned subsidiary of the owner of the well-established resort hotel; and
- (iv) Nemacolin’s proposed facility is not located within 15 linear miles of another licensed facility.

With respect to the second criteria noted above, the Board inquired during the licensing hearing whether Nemacolin’s proposed facility, which would be housed in a pre-existing resort building located 0.38 miles from Nemacolin’s Falling Rock Hotel and 0.86 miles from Nemacolin’s Chateau Lafayette Hotel, is “in the hotel” for eligibility purposes under the Act. (Nemacolin Tr. 96:12-96:17 [Coy]). The answer is yes.

By its terms, Section 1305 requires not that a licensed facility be “in the hotel,” but, rather, that the facility be located “**in a well-established resort hotel . . . having substantial year-round recreational guest amenities.**” 4 Pa. C.S. § 1305(a)(1) (emphasis added). Significantly, the Board’s own regulations make clear that the concept of a “well-established resort hotel . . . having substantial year-round recreational amenities” – within which a Category 3 facility must be located – is substantially **broad**er in geographic scope than a particular building or buildings. Thus, Board Regulation 441a.23 provides in pertinent part that,

“[t]o qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer **at the resort hotel** a complement of amenities characteristic of a well-established resort hotel, including but not limited to,” among other things,”[s]ports and recreational activities and facilities such as a golf course or golf driving range” and “[d]ownhill or cross-country skiing facilities.” 58 Pa. Code § 441a.23(a) (emphasis added). Simply stated, one cannot offer amenities such as golf and skiing (as Nemacolin does) “at the resort hotel” unless the resort hotel *per se* encompasses more than the hotel building itself.

This critical point is further underscored by the Act’s definition of “hotel.” Here, the General Assembly expressly distinguished between a hotel for purposes of a Category 1 or 2 facility, on the one hand, which must “be attached to, physically connected to or adjacent to the certificate holder’s licensed facility,” and a hotel for purposes of a Category 3 facility on the other hand, which is **any** “building or buildings in which members of the public may, for a consideration, obtain sleeping accommodations.” 4 Pa. C.S. § 1103 (defining “hotel”). This distinction makes clear that the General Assembly did not intend to limit the geographically expansive notion of “a well-established resort hotel . . . having substantial year-round recreational guest amenities” as contemplated by the Act and the Board’s regulations.

Finally, even assuming that the statutory language were somehow unclear on this issue, Pennsylvania law vests agencies such as the Board with broad discretion to interpret their enabling legislation.<sup>5</sup> Notably, the Board has previously interpreted Section 1305(a) **not** to require that a Category 3 facility be physically located within a hotel structure. Thus, in its Adjudication in *In re: Application of Valley Forge Convention Center Partners, LP*, Docket No.

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<sup>5</sup> *Insurance Fed’n of Pennsylvania, Inc. v. Commonwealth Ins. Dept.*, 929 A.2d 1243, 1252 (Pa. Commw. Ct. 2007) (citing authorities).

19421, the Board held that the applicant's proposed facility would be "in a well-established resort hotel" under Section 1305(a) where there were two hotels "situated at opposing ends of" – but not containing – "the proposed licensed facility."<sup>6</sup> Accordingly, consistent with the plain language of the Act and the Board's regulations, as well as the Board's own precedent in *Valley Forge*, the Category 3 facility proposed by Nemaocolin will be "in" a well-established resort hotel for eligibility purposes under the Act.<sup>7</sup>

### **III. NEMACOLIN HAS DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE THAT IT IS SUITABLE FOR CATEGORY 3 LICENSURE.**

Nemaocolin has likewise demonstrated by clear, convincing and un rebutted evidence at its November 17, 2010 suitability hearing that it satisfies each and all of the Act's suitability requirements. At the conclusion of that hearing, the Board's Director of Licensing testified that "Licensing is not aware of any suitability issues that would preclude licensure of [Nemaocolin] as a Category 3 Slot Machine Operator." (Nemaocolin Tr. 193:16-193:22 [Hensel]).

#### **A. GOOD CHARACTER, HONESTY AND INTEGRITY**

Nemaocolin possesses the good character, honesty and integrity required for licensure by Section 1310 of the Act. Thus, having completed an exhaustive background investigation into Nemaocolin and its principals, the Board's Assistant Enforcement Counsel reported to the Board "[a]ll of the information presented today by [Nemaocolin] is consistent with that reviewed by the [Bureau of Investigations and Enforcement] and [Office of Enforcement Counsel] . . . [t]herefore [the Office of Enforcement Counsel] finds no reason to preclude suitability in this matter." (Nemaocolin Tr. 196:15-196:19 [Powers]).

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<sup>6</sup> Board's Order and Adjudication on May 8, 2009 approving Valley Forge Convention Center Partners, L.P. for Category 3 licensure, Finding of Fact No. 7 (hereinafter the "Valley Forge Adjudication").

<sup>7</sup> See also Nemaocolin's Answer to Washington Trotting Association, Inc.'s Petition to Intervene, filed with the Clerk, Office of Hearings & Appeals, on October 19, 2010 and incorporated in its entirety herein by reference.

**B. FINANCIAL FITNESS**

The same is true of Nemacolin's financial fitness for purposes of Section 1313 of the Act. Having completed its own exhaustive investigation into Nemacolin's finances, the Board's Bureau of Investigations and Enforcement, Financial Investigations Unit ("FIU") reported to the Board that the FIU "did not find anything material which would preclude [Nemacolin] from obtaining a Category Three license." (Nemacolin Tr. 194:24-195:1 [O'Neil]).

**C. OPERATIONAL VIABILITY**

Nemacolin has likewise demonstrated the requisite operational viability for suitability purposes in accordance with Board Regulation 441a.7(f)(3). In particular, Nemacolin plans to market gaming as an additional resort amenity to increase patronage at Nemacolin Woodlands Resort and to increase the competitiveness of Nemacolin Woodlands Resort among destination resorts nationwide. (Nemacolin Tr. 24:17-25:19 [Plummer]; Nemacolin Tr. 47:13-51:3 [McDowell]).

Nemacolin has the expertise to conduct a successful gaming operation through its retention of IOC-PA, L.L.C. ("IOC-PA" or "Manager"), a wholly-owned subsidiary of Isle of Capri Casinos, Inc. ("Isle of Capri"), to manage and operate the proposed facility. (Nemacolin Tr. 18:3-18:5 [Magerko]).<sup>8</sup> Isle of Capri is a leading developer, owner and operator of branded gaming facilities and related lodging and entertainment facilities in regional markets in the United States. (Nemacolin Tr. 27:5-27:16 [Perry]). Currently operating 15 casino properties in six states across the United States, Isle of Capri properties serve approximately 2 million visitors each year. (Nemacolin Tr. 27:17-27:18 [Perry]). Nemacolin, through its Manager, is prepared to expand and renovate an existing resort building known as the Wildside venue to create a 23,455-square foot gaming floor with 600 slot machines and 28 table games. (Nemacolin Tr. 36:16-



40:13 [Keller]). These renovations are expected to be completed within approximately nine months of Nemaocolin's receiving from the Board a final, non-appealable Category 3 license at a construction cost of approximately \$50 million, the financing for which has been arranged through Isle of Capri. (Nemaocolin Tr. 40:21-40:22 [Keller]; Nemaocolin Tr. 27:22-28:2 & 116:3-116:17 [Perry]).

Nemaocolin has presented expert testimony that it will generate and sustain an acceptable level of growth of revenue. Applying the generally accepted industry methodology to project gaming trips and revenue from the resort and tourism market and from the local market, TMG Consulting ("TMG") projects that Nemaocolin's gaming operations will generate stabilized revenues of \$257 per slot machine per day and \$1,030 per table game per day,<sup>9</sup> for a total of approximately \$66.8 million.<sup>10</sup>

**D. SECTION 1325(C) CRITERIA**

Nemaocolin has also demonstrated that it satisfies each and all of the additional licensing criteria set forth in Section 1325(c) of the Act.

**1. Section 1325(c)(1) (Location & Quality of the Proposed Facility)**

With respect to Section 1325(c)(1), Nemaocolin's proposed Lady Luck Casino will be a high quality facility in a premier location, with excellent road and transit access, ample parking and centrality to its market service area. As previously noted, the proposed facility will be located within Nemaocolin Woodlands Resort, which is adjacent to U.S. Route 40 in Wharton Township. (Nemaocolin Tr. 34:21-35:11 & 35:21-36:15 [Keller]).

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(...continued)

<sup>8</sup> See also January 4, 2010 Management Agreement by and between Nemaocolin and IOC-PA.

<sup>9</sup> Nemaocolin Suitability Report, Exhibit I, Background Investigation Report, p. 12.

<sup>10</sup> TMG's detailed Gaming, Resort and Tourism Market Assessment is in the record at Appendix 47 to the Application.

Nemacolin retained McMillen Engineering (“McMillen”) to study the impact that the proposed facility will have upon area traffic and parking. Based upon its analysis of existing traffic conditions and its projections of future conditions with the casino, McMillen concluded that 600 slot machines and 28 table games at Nemacolin Woodlands Resort, with the addition of a left-turn lane and traffic light at the entrance closest to the proposed facility, would have no negative impact on traffic or the local community.<sup>11</sup> Notably, these findings are consistent with the October 6, 2010 traffic review letter prepared for the Board by McCormack Taylor, which states: “As part of our site visit [we] did not note any significant issues associated with the implementation of the recommended improvements.” Parking does not and will not present a problem. Indeed, given the substantial existing parking capacity, McMillen concluded that the existing parking capacity is sufficient to meet future needs. (Nemacolin Tr. 35:21-36:6 [Keller]).

## **2. Sections 1325(c)(2) and (7) (Job Creation & Economic Development)**

The record demonstrates the strong potential for the creation of quality permanent jobs and economic development which will result from awarding a Category 3 license to Nemacolin. Specifically, a casino at Nemacolin will directly result in 600 full and part-time positions, with 400 jobs being in the gaming facility itself and 200 being incremental jobs at the resort. (Nemacolin Tr. 42:14-42:18 [McDowell]). All full-time position will include an array of standard benefits. (Nemacolin Tr. 128:20-22 [Perry]). In addition, the casino project will create 150 temporary construction jobs during the period of time when the existing resort building is converted to the Category 3 facility. (Nemacolin Tr. 40:23-40:24 [Keller]).

With respect to the new positions, efforts will be made to fill 80 percent of the positions with residents from the Laurel Highlands Region and 90 percent of the positions with

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<sup>11</sup> The Local Impact Report and the Traffic Impact Study prepared by McMillen are in the record at Appendix 41 to the Application.

Pennsylvania residents. (Nemacolin Tr. 42:24-43:2 [McDowell]). Overall, and not including the construction jobs, Nemacolin's expert TMG concluded that Nemacolin's proposed gaming facility will create and/or support 2,126 permanent jobs on and off the resort.<sup>12</sup> TMG has further opined that with the addition of the gaming amenity, Nemacolin Woodlands Resort will generate \$100 million in additional economic activity from gaming operations and increased non-gaming operations and approximately \$36.8 million in annual state and local tax revenues.<sup>13</sup>

### **3. Sections 1325(c)(3)-(5) (Diversity & Equal Opportunity)**

With respect to Sections 1325(c)(3)-(5), Nemacolin already has a distinguished record of hiring and promoting women and minorities. With respect to Nemacolin's workforce, approximately 51 percent are women and more than 7 percent are minorities (compared to a minority population in Fayette County of approximately four percent). (Nemacolin Tr. 136:13-136:17 [Quaglia]).<sup>14</sup> With respect to casino positions, as previously noted, Nemacolin has retained IOC-PA, the wholly-owned subsidiary of experienced gaming management company Isle of Capri, to manage and operate the proposed facility. IOC-PA is fully committed -- and has already developed good faith plans -- to recruit, train and upgrade diversity in all employment classifications, to enhance the representation of diverse groups in the operation of the proposed facility and to assure equality of opportunity in employment and contracting. (Nemacolin Tr. 44:19-45:11 [McDowell]). In addition, Isle of Capri's Chairman and Chief Executive Officer,

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<sup>12</sup> TMG's Socioeconomic Impact Assessment is in the record at Appendix 47 to the Application.

<sup>13</sup> The state and local tax revenues projected by TMG include gaming taxes as well as other taxes on non-gaming resort activities (i.e. hotel, sales and income). TMG's *Socioeconomic Impact Assessment*, p. 22.

<sup>14</sup> James Perry also testified that approximately 53 percent of Isle of Capri's employees were female and approximately 40 percent were minorities. (Nemacolin Tr. 93:7-16 [Perry]).

James Perry, made very clear that the placement of minorities in management and supervisory positions is a key objective of his company. (Nemacolin Tr. 136:25-138:2 [Perry]).<sup>15</sup>

#### **4. Section 1325(c)(6) (Development of Tourism)**

Awarding a Category 3 license to Nemacolin will benefit tourism in the Commonwealth for purposes of Section 1325(c)(6) and Section 1305. As a true destination resort, Nemacolin presently attracts more than 350,000 resort guests annually, 60% of which come from outside Pennsylvania. (Nemacolin Tr. 23:22-23 [Plummer]). In 2009 alone, Nemacolin attracted visitors from 44 states. (Nemacolin Tr. 24:1-3 [Plummer]). Nemacolin's substantial existing market includes the Washington, D.C. Metro area, Western Pennsylvania, Ohio, West Virginia, and Western Maryland. (Nemacolin Tr. 23:14-24:3 & 103:7-8 [Plummer]). With substantial market for Nemacolin Woodlands Resort already in place, Nemacolin's proposed facility will expand the resort's attractiveness for these largely out-state resort vacationers that travel substantially farther for their leisure activities (Nemacolin Tr. 55:15-17 [Fenich]). By adding a casino, Nemacolin will attract 350,000 additional visitors to the Laurel Highlands region and generate 30,000 additional room nights at Nemacolin Woodlands Resort on an annual basis. (Nemacolin Public Input Hearing Tr., September 8, 2010 32:15-19 [Plummer]). No other licensee or applicant is situated as well as is Nemacolin to market to this substantial and under-penetrated market of resort vacationers. Nor does any other applicant have the substantial existing marketing infrastructure that Nemacolin has. (Nemacolin Tr. 24:4-24 [Plummer]).

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<sup>15</sup> See also the Diversity Plan developed by IOC-PA, L.L.C. (Appendix 45 to the Application.) which, as indicated in Exhibit 8 to Nemacolin's Suitability Report, has been deemed to be "not deficient" by Mozelle Daniels, the Board's Director of Diversity.

**5. Section 1325(c)(8) (Satisfaction of Local Commitments)**

Nemacolin Woodlands Resort has been in operation for 23 years. Led through example by the Hardy Family, the Resort has a longstanding history of extraordinary corporate citizenship, significant charitable giving and support of numerous non-profits, community organizations and governmental agencies for many, many years. This support -- exhaustively detailed in Exhibit 6 to the Suitability Report -- existed before the Category 3 application process and will undoubtedly continue in the future regardless of whether Nemacolin is granted a license.

As a result of the sustained commitment to the community shown by both Nemacolin Woodlands Resort and the Hardy Family, as well as the merits of the project itself, the proposed Lady Luck Casino has garnered unrivaled support from its neighbors and elected officials. Over 1,100 signatures were obtained on a petition supporting the project and over 80 percent of the written comments received by the Board about Nemacolin were positive. The leadership of both Wharton Township and Fayette County have also signaled their enthusiastic support, along with the Laurel Highlands Visitors Bureau, the Fayette County Chamber of Commerce and the Fay-Penn Economic Development Council. Led by Senator Kasunic, the project also enjoys the backing of a broad swath of state legislators, including a majority of the Representatives in the General Assembly's Southwest Caucus. (Nemacolin Tr. 75:25-76:16 [Nobers]). None of the other applicants seeking licensure come close to matching either Nemacolin's commitment to its community or the community support that Nemacolin enjoys with respect to its proposed gaming amenity.

**6. Section 1325(c)(9) (Mitigation of Adverse Effects)**

Because Nemacolin Woodlands Resort is an existing world-class tourist destination and is "essentially self-supportive and relies very little on the local community in

terms of supplying utilities,”<sup>16</sup> there will be little to no adverse impact on Township or County services. (Nemacolin Tr. 34:21-35:20 [Keller]). In addition, Nemacolin’s Manager will implement a responsible gaming program to promote responsible gaming and prevent addictive and/or underage gaming. (Nemacolin Tr. 46:23-47:12 [McDowell]).<sup>17</sup>

#### **7. Sections 1325(c)(10)-(11) (Employee Relations)**

Since purchasing the property in 1987, the Hardy Family has operated and managed Nemacolin Woodlands Resort using a team approach designed to reward exceptional performance and respect the talents and contributions of each employee. Together, the Nemacolin Team has accomplished unparalleled results, including Forbes Five Star and AAA Five Diamond Awards for the Falling Rock Hotel and Forbes Four Star and AAA Four Diamond Awards for the resort as whole. No other applicant can claim such a talented workforce as that offered by Nemacolin.<sup>18</sup>

Of course, like any enterprise with over 1,000 employees, Nemacolin Woodlands Resort must address a typical array of employee issues. Such issues are addressed in a forthright and productive fashion, and the Bureau of Investigations and Enforcement did not find anything of concern relative to Nemacolin Woodlands Resort’s compliance with labor laws and regulations. (Nemacolin Tr. 196:15-196:19 [Powers]). As Nemacolin has only one location, Section 1325(c)(11) is not applicable.

Together with its good character, honesty and integrity, its financial fitness and its operational viability, Nemacolin’s satisfaction of the criteria set forth in Section 1325(c) establishes that Nemacolin is suitable for licensure by the Board.

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<sup>16</sup> Nemacolin’s Application for a Category 3 license, Local Impact Report, Appendix 41, p. 1.

<sup>17</sup> Nemacolin’s Compulsive and Problem Gaming Plan is included in the record at Appendix 43 to the Application.

<sup>18</sup> Nemacolin Application for a Category 3 license, Appendix 29 (attachment setting forth resort’s awards).

**IV. NEMACOLIN BEST FULFILLS THE LEGISLATIVE INTENT FOR THE CATEGORY 3 LICENSE: ENHANCE TOURISM AT YEAR-ROUND RECREATIONAL AND TOURISM LOCATIONS IN THE COMMONWEALTH.**

As the Board explained last year to the Supreme Court of Pennsylvania:

[I]t cannot be denied that Category 3 slot machine licenses were designed to increase the flow of tourism **at well-established resort hotels** in the Commonwealth and, in turn, boost said businesses and related ancillary services.<sup>19</sup>

Resorts that offer a critical mass of amenities on-site for a complete get-away experience, including in particular gaming, golf and spas, are the best positioned to attract tourists and attract them from further distances. (Nemacolin Tr. 55:9-17 [Fenich]). As the most well-established resort with the broadest array of amenities, Nemacolin is best positioned to increase tourism at a well-established resort hotel. (Nemacolin Tr. 53:2-14 & 59:6-21 [Fenich]). At nearly 2,000 acres in size, Nemacolin Woodlands Resort offers on its property nine out of the 10 categories of amenities specified in the Board's Regulations.<sup>20</sup>

Two of Nemacolin Woodlands Resort's amenities, in particular, set it apart from the other applicants. First, "golf has become a critical element for inducing increased visitation and economic success." (Nemacolin Tr. 57:2-4 [Fenich]). With two 18-hole golf courses (at different levels of difficulty), the Nemacolin Woodlands Golf Academy, and practice facilities, which include 6,000 square feet of bent grass tees, 27,000 square feet of chipping and putting greens, 3 bunkers and 7 target greens, Nemacolin's golf amenities create an almost unparalleled

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<sup>19</sup> Reply Brief of Respondent in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Bd.*, No. 106 MM 2009 (Pa.), at 15 (emphasis added).

<sup>20</sup> Board Regulation 441a.23(a) requires that, "to qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer at the resort hotel a complement of amenities characteristic of a well-established resort hotel, including but not limited to the following: (1) sports and recreational activities and facilities such as a golf course or golf driving range; (2) tennis courts; (3) swimming pools or a water park; (4) a health spa; (5) meeting and banquet facilities; (6) entertainment facilities; (7) restaurant facilities; (8) downhill or cross-country skiing facilities; (9) bowling lanes; (10) movie theaters." The only amenity on this list not presently available at Nemacolin Woodlands Resort is a movie theater. (Nemacolin Tr. 19:24 -23:6 [Plummer]).

synergy with the proposed gaming amenity. “[O]f the 700 casinos in the United States, less than 50 of them even have a golf course. Nemaacolin would become one of ten with more than one golf course.” (Nemaacolin Tr. 57:4-9 [Fenich]). In contrast to Nemaacolin, neither Penn Harris or Mason-Dixon have a golf course and Bushkill only has an 18-hole golf course without the additional golf amenities available at Nemaacolin Woodlands Resort.<sup>21</sup>

Second, “full-service spas are also an integral part of what the consumer demands.” (Nemaacolin Tr. 57:10-11 [Fenich]). Nemaacolin offers a 2,400 square foot fitness center and the 32,000 square foot, full-service Woodlands Spa which includes 29 individual treatment rooms and 3 couples treatment rooms. As part of their visit or stay at Nemaacolin, guests have the option of basic massages and body scrubs or choosing from one of eight different specialized services.<sup>22</sup> While the other applicants have a basic fitness center and Bushkill offers massages on property, none of the other applicants have a comparable array of spa services.<sup>23</sup>

Awarding the Category 3 license to Nemaacolin represents a unique opportunity to create an almost unrivaled resort destination with gaming, golf, skiing, shooting, a spa and an array of other existing amenities. (Nemaacolin Tr. 53:2-14 [Fenich]). The size, quality and array of amenities at Nemaacolin Woodlands Resort will ensure that the casino always complements the existing amenities and will never become “**the ‘tail wagging the dog.’**”<sup>24</sup> Illustrating this point is the projection by TMG that 78 percent of the guests projected to visit the gaming amenity at

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<sup>21</sup> Compare Nemaacolin’s Amenities Plan and Fee Schedule to the Amenities Plan for each other applicant, all of which are attached hereto as Attachment 1.

<sup>22</sup> Nemaacolin Suitability Report, Exhibit 1, Background Investigation Report, p. 15. The eight specialized services are Water Path, Woodlands Personalized Facial, Woodlands GQ Facial, Woodlands Signature Manicure and Pedicure, DreamCatcher, Kila Body Work, Soli-Tone skin service and Acutonics.

<sup>23</sup> Compare Nemaacolin’s Amenities Plan and Fee Schedule to the Amenities Plan for each other applicant, all of which are attached hereto as Attachment 1.

<sup>24</sup> Reply Brief of Respondent in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Bd.*, No. 106 MM 2009 (Pa.), at 5 (“[R]equiring the applicant to be the owner of a resort hotel is to  
(continued...)”)



Nemacolin Woodlands Resort would be from the resort and tourism market. (Nemacolin Tr. 70:16-19 [Mumphrey]).<sup>25</sup>

In contrast, none of the other applicants can offer their guests the complete resort experience that is available at Nemacolin Woodlands Resort. Bushkill does not have a nearly comparable array of amenities.<sup>26</sup> During Mason-Dixon's licensing hearing, Commissioner Trujillo implicitly recognized that their resort does not even exist when he inquired: "if next week or the following week I wanted to spend the night at the well-established Mason-Dixon Resort, what number would I call?" Mr. LeVan's answer conceded that one would call the Eisenhower Inn & Conference Center because "[t]here is no Mason-Dixon [Resort], obviously, today." (Mason-Dixon Tr. 145:17-146:6 [LeVan]) The same question and answer also applies to Penn Harris's West Shore Resort.

While Penn Harris and Mason-Dixon each argue that their bare amenities, *i.e.* miniature golf, paddle boats, fitness center, etc.<sup>27</sup> satisfy the baseline eligibility requirements, both applicants miss the point of the Category 3 license: adding casino gaming as a complement to an existing array of amenities. Neither applicant's proposed resort presently offers substantial amenities of a nature similar to Nemacolin Woodlands Resort's golf courses, ski slopes on Mystic Mountain, and 35 sporting clay stations that constitute **independent attractions** drawing tourists to the resort. To the contrary, the amenities at these other sites are mere after thoughts

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(...continued)

ensure that the facilities awarded such licenses are, first and foremost, concerned with running the resort; and the casino amenity should not become the 'tail wagging the dog.'").

<sup>25</sup> Dr. Mumphrey's reports are included in the Application as part of Appendix 47 and disclosed to the other parties as exhibits to Nemacolin's Pre-Hearing Memorandum.

<sup>26</sup> Compare Nemacolin's Amenities Plan and Fee Schedule to the Amenities Plan for each other applicant, all of which are attached hereto as Attachment 1.

<sup>27</sup> Mason Dixon Application for a Category 3 License, Appendix 29 and 32; Penn Harris Application for a Category 3 License, Appendix 29 and 32.

existing only to help meet the unique eligibility requirements for a Category 3 license. Paradoxically, Mason-Dixon relies on the 50,000 square foot expo center, go-kart tracks and other amenities inside the AllStar Events Complex<sup>28</sup> for eligibility purposes although they intend to replace all of the amenities in that complex with their proposed gaming facility.<sup>29</sup> Penn Harris's signature amenity – an “RV World” – is little more than a concept in an application created to help meet the 275 room requirement. Essentially, these two applicants propose to operate, first and foremost, casinos and the resort would be secondary concern – precisely the “tail wagging the dog” that the General Assembly sought to avoid.<sup>30</sup>

Unlike Nemaquin Woodlands Resort where the proposed gaming facility would be a complementary amenity, Penn Harris's and Mason-Dixon's proposed gaming amenity would be the main attraction for their purported resorts. Penn Harris and Mason-Dixon, respectively, project that they will generate 96.06 percent<sup>31</sup> and 86.52 percent<sup>32</sup> of their gaming revenue from their local market simply because of the proximity of the casino to the adult population. In contrast, TMG projected that no more than two-thirds of the gaming revenue generated at Nemaquin's proposed facility will be derived from its local and regional market;

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<sup>28</sup> Mason Dixon Application for a Category 3 License, Appendix 29.

<sup>29</sup> “Those amenities basically would disappear under our plan.” (Mason-Dixon Tr. 129:2-7 [LeVan]). Similarly, Bushkill proposes to replace its Event Center with its proposed gaming facility. Bushkill Application for a Category 3 license, Appendix 29.

<sup>30</sup> Reply Brief of Respondent in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Bd.*, No. 106 MM 2009 (Pa.), at 5 (“[R]equiring the applicant to be the owner of a resort hotel is to ensure that the facilities awarded such licenses are, first and foremost, concerned with running the resort; and the casino amenity should not become the ‘tail wagging the dog.’”).

<sup>31</sup> Penn Harris Pre-Hearing Memorandum pursuant to Board Regulation 441a.7(i), *Gaming Market Assessment: Holiday Inn – Harrisburg West*, prepared by Gaming Market Advisors, p. 23.

<sup>32</sup> Mason-Dixon's Pre-Hearing Memorandum pursuant to Board Regulation 441a.7(i), *Estimates of Gaming Revenue and Net Operating Income: The Proposed Mason-Dixon Resort & Casino*, PKF Consulting, November 26, 2010, p. 18.

fully one-third will be generated from the resort and tourism market, of which approximately 20.9 percent is just from Nemaquin overnight guests.<sup>33</sup>

Lest there be any doubt that Mason-Dixon intends to operate a casino first and foremost, Mason-Dixon has delegated all gaming **and non-gaming** operations for its proposed Mason-Dixon Resort to its casino operator, Penn National Gaming, Inc. (Mason-Dixon Tr. 155:14-15 [Snyder]). Mason-Dixon is the only applicant that would have no operations separate from its casino management. In addition, the proposed Mason-Dixon Resort will be entirely dependent on its gaming facility for the property's economic viability since according to Mason-Dixon, **the Eisenhower Inn & Conference Center "likely will not survive without a gaming license."**<sup>34</sup>

**V. WITH THE BROADEST ARRAY OF EXISTING AMENITIES AND MEMBERSHIPS, NEMACOLIN IS BEST POSITIONED TO SATISFY THE UNIQUE ACCESS REQUIREMENTS FOR A CATEGORY 3 FACILITY.**

The "patron of the amenities" requirement is a specific challenge unique to the Category 3 license. Consistent with the legislative intent for the Category 3 license, requiring casino patrons to spend \$10 on the well-established resort hotel's amenities ensures that the gaming amenity drives patronage to the well-established resort hotel's non-gaming amenities. At the same time from a gaming revenue perspective, Isle of Capri Chairman James Perry put it best: "a slot machine doesn't generate revenue by itself. You need a customer in front of that slot machine in order to generate revenue. And in order to get that customer to a resort casino, you need to have an amenity." (Nemaquin Tr. 85:1-86:5 [Perry]).

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<sup>33</sup> Nemaquin's Pre-Hearing Memorandum pursuant to Board Regulation 441a.7(i), *Gaming, Resort and Tourism Market Assessments: Nemaquin Woodlands Resort Site*, prepared by TMG Consulting p. 107.

<sup>34</sup> Mason-Dixon Application for a Category 3 slot machine license, Appendix 29, p. 3.

Effectively, the challenge for the Category 3 licensee is to establish a synergy between the gaming and non-gaming amenities in the well-established resort hotel. This is a challenge that Nemaquin previously confronted with its prior application in 2005-2006. Today, no other applicant is as well-positioned as Nemaquin to establish this synergy in order to promote tourism in the Commonwealth and generate gaming taxes for the Commonwealth (as well as significant incremental non-gaming taxes from increased utilization of non-gaming resort amenities).

Nemaquin is best positioned to establish this synergy because only Nemaquin Woodlands Resort has a critical mass of existing amenities and memberships to cross-market with and/or package with the gaming amenity. The array of amenities and activities available to overnight guests and daily guests at Nemaquin are without comparison among the other applicants, particularly Mason-Dixon and Penn Harris, who propose creating resorts around their proposed gaming facilities (as described above). Demonstrating its lack of amenities, Mason-Dixon proposed selling “food vouchers” for their food & beverage outlets to keep this access requirement from being a deterrent. (Mason-Dixon Tr. 133:5-12 [Hayes]).

In addition to the resort’s existing array of amenities,<sup>35</sup> Nemaquin’s existing memberships are a critical component of how Nemaquin can uniquely satisfy the access requirements for a Category 3 facility. During its application process in 2005-2006, Nemaquin sought approval from the Board for a Casino Entry Plan that would have permitted entry to adult individuals who “participate[d] in the amenities available to the registered guests at [Nemaquin Woodlands Resort] by either (a) holding membership in one of the identified clubs which provides unlimited access to a Nemaquin amenity; or (b) purchasing \$25 worth of access to a

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<sup>35</sup> See Nemaquin Suitability Report, Exhibit 1, Background Investigation Report, p. 15-18.

Nemacolin amenity.”<sup>36</sup> At that time, the Board would not approve memberships as a form of satisfying the “patron of the amenities” requirement. With amendments to Board Regulations<sup>37</sup> and the Act,<sup>38</sup> however, adult individuals holding Board-approved memberships may now patronize the gaming amenity as well as the resort amenities included in the resort membership.

Nemacolin offers a number of existing memberships to promote its golf, snow sports, and shooting amenities. (Nemacolin Tr. 87:9-13 [Plummer]).<sup>39</sup> If awarded the license, Nemacolin proposes additional memberships to its existing offerings. (Nemacolin Tr. 153:18-22 and 154:2-19 [Plummer]). While all such memberships are subject to Board-approval, the fact that the existing memberships were made available for resort purposes independent of the proposed gaming amenity should demonstrate that they are legitimate resort memberships available at fair market value. 4 Pa. C.S. § 1305(a)(1.1).

Mason-Dixon and Penn Harris, in particular, struggled in describing their proposed memberships during their respective suitability hearings and would struggle adhering to this requirement in practice as well because they do not presently offer memberships to any of their amenities.<sup>40</sup> Mason-Dixon proposed memberships that essentially evade the access requirements in order to simply drive local market customers to the casino rather than use the memberships to promote a synergy between existing resort amenities and the gaming amenities as Nemacolin proposes. (Mason-Dixon Tr. 133:13-25 [Hayes]). Specifically, Mason-Dixon

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<sup>36</sup> Alan Kohler, Esquire, Letter to Chief Counsel of the Pennsylvania Gaming Control Board, November 7, 2006, p. 1-2.

<sup>37</sup> On April 9, 2007, the Board adopted regulations which permitted Category 3 facilities to admit individuals holding a seasonal year-round Board-approved membership. 37 Pa. B. 2296 (Temporary Regulation); 37 Pa. B. 2695 (Permanent Regulation); *codified at* 58 Pa. Code § 441.23(c).

<sup>38</sup> On January 7, 2010, the General Assembly codified the Board Regulation 441a.23(c) regarding individuals holding Board-approved memberships in Section 1305(a)(1.1) of the Act. Act 1 of 2010, Senate Bill 711.

<sup>39</sup> *See also* Woodlands Fayette, LLC Application for a Category 3 License, Appendix 32-33.

<sup>40</sup> Bushkill did not present testimony on any memberships that it presently offers. Its Amenities Plan only identifies a season pass to its golf course. Bushkill Application for a Category 3 license, Appendix 32.

suggests selling “recreational memberships where you have access to [their] lake, [their] campgrounds... and sports and recreation membership where you have access to [their] fitness center and [their] tennis courts. (Mason-Dixon Tr. 133:17-24 [Hayes]). Similarly, Penn Harris agreed with Mason-Dixon’s approach to memberships:

I was present yesterday for [Mason-Dixon]... Just about every example they gave of situations that they thought they could either create memberships, or how that fee could be applied... [w]e would have to develop the same thing with the Board's guidance. (Penn Harris Tr. 155:23-156-5 [Sklar]).

Commissioner Coy, however, admonished all of the applicants that the “patron of the amenities” requirement is of substantial importance and cannot be evaded:

[O]ne comment about the \$10 fee and a patron of the amenities. Whoever gets this license is going to have to live with it... So, struggle with it, figure it out, but understand you're going to have to live with it because it's the law” (Nemacolin Tr. 96:95:23-96:9 [Coy]).

Having struggled with this requirement several years ago, Nemacolin has figured it out and, with the broadest array of amenities, the \$10 threshold, its memberships, and Isle of Capri as the manager, Nemacolin is now the applicant that will best be able to make it work. A review of each applicants’ Amenities Plan (Attachment 1 hereto) illustrates this point. Moreover, Nemacolin is uniquely able to develop synergies between its gaming and non-gaming amenities as intended by the access requirements of the Act rather than simply finding ways around the Act to drive local market customers to its casino.

**VI. BUSHKILL DOES NOT SERVE THE BEST INTERESTS OF THE COMMONWEALTH BECAUSE IT WOULD BE LOCATED BARELY 15 MILES AWAY FROM MOUNT AIRY CASINO RESORT IN AN EXISTING “REGIONAL GAMING AREA.”**

Mount Airy Casino Resort (“Mount Airy”) and Bushkill’s Fernwood Hotel & Resort (“Fernwood”), barely fifteen miles apart, are certainly in a “resort area” as Commissioner Sojka recognized during the Bushkill licensing hearing:

[P]eople who are going to be gaming here are likely to be in the Poconos for one of the other kinds of amenities, to stay overnight, to play golf, to enjoy the scenery, something of that sort. (Bushkill Tr. 84:13-16 [Sojka]).

Recognizing the number of hotels, resorts, activities and visitors in this region, Commissioner Sojka continued his questioning with the following hypothetical.

When you're thinking about qualifying someone to game through participation in another amenity, does this --- this is just a hypothetical. Does this raise the opportunity for some sort of partnership with other potential operators, that this could become, to some degree, a regional gaming area in the Poconos? (Bushkill Tr. 84:16-22 [Sojka]).

The simple answer to Commissioner Sojka's hypothetical is that a Category 3 licensee cannot anchor such a regional gaming area where the attractions and activities are also regional because of the strict access restrictions imposed on Category 3 licensees. Regional visitors are not qualified to patronize a Category 3 facility unless they first qualify as an "overnight guest of the well-established resort hotel," or a "patron" or member of "one or more of the amenities provided by the well-established resort hotel." 4 Pa. C.S. § 1305(a)(1) and (1.1). Consequently, a Category 3 facility is suited for a destination resort with the attractions and activities on-site.

However, a Category 2 licensee is well suited to anchor such a regional gaming area because all adult, regional visitors are immediately and conveniently qualified to access a Category 2 facility. In fact, the "at large" Category 2 licensed facility, restricted to "revenue- or tourism-enhanced locations" were specifically intended for this purpose. 4 Pa. C.S. § 1304(a)(1). When the Board granted a Category 2 license for the Mount Airy, barely 15 miles away from Fernwood, the Board emphasized that its location in the Poconos region is a "revenue- or

tourism-enhanced location,”<sup>41</sup> and the Facility “will enhance the draw of tourists to the region and generate gaming revenue for the Commonwealth.”<sup>42</sup>

With a location in the middle of the Poconos resort area, Mount Airy already anchors a “regional gaming area” in the Poconos. Several hotels and resorts in the Poconos formally or informally partner with Mount Airy to promote gaming as a nearby attraction for their guests. The best example is Fernwood itself:

[Y]ou can spend the day [at Mount Airy] enjoying the excitement of the Pocono’s premier casino, playing the slots, dining, plus dancing in their Gypsies Lounge and Nightclub.<sup>43</sup>

**Mt. Airy Casino Package** - \$123.00 per person double occupancy; Arrive at Fernwood Hotel and Resort in time for lunch, enjoy the hotel amenities then have dinner. Wake up with a hearty country breakfast then head over to Mt. Airy Casino to try your luck.<sup>44</sup>

In addition, several other hotels and resorts promote Mount Airy as a local attraction to their guests. The Shawnee Inn advertises Mount Airy as one of the “most popular attractions in PA” and one of the “local attractions to choose from here.”<sup>45</sup> The Inn at Pocono Manor advertises that it is “just minutes away from shopping, skiing, water park activities, horse racing, and gambling!”<sup>46</sup> referring to both Mount Airy and Mohegan Sun at Pocono Downs.<sup>47</sup>

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<sup>41</sup> Board’s Order and Adjudication on February 1, 2007 approving Sands Bethworks Gaming, LLC and Mount Airy #1, LLC for Category 2 licensure, ¶ 110-11 (hereinafter the “Mount Airy Adjudication”).

<sup>42</sup> *Id.*, p. 112.

<sup>43</sup> Fernwood Hotel & Resort, <http://fernwoodhotel.com/casino.php>, (visited on April 16, 2010). Fernwood also promoted Mohegan Sun at Pocono Downs as another gaming option available to its guests.

<sup>44</sup> Fernwood Hotel & Resort, [http://fernwoodhotel.com/group\\_packages.php?cRecId=88](http://fernwoodhotel.com/group_packages.php?cRecId=88) (visited on April 16, 2010) (emphasis in original).

<sup>45</sup> Shawnee Inn, <http://www.shawneeinn.com/attractions-in-pa/index.cfm>, (visited on November 20, 2010).

<sup>46</sup> Inn at Pocono Manor, <http://poconomanor-px.trvlclick.com/pages/activities.htm>, (visited on November 20, 2010).

<sup>47</sup> Other examples include the Crescent Lodge and the Woodfield Manor. Crescent Lodge, <http://www.crescentlodge.com/Pages/Activities.html>, (visited on November 20, 2010); Woodfield Manor, [http://www.woodfieldmanor.com/woodfield\\_manor\\_todo\\_poconos\\_vacation.html](http://www.woodfieldmanor.com/woodfield_manor_todo_poconos_vacation.html), (visited on November 20, 2010).



Consequently, awarding a license to Bushkill would not have the greatest impact on tourism because it would be duplicative with Mount Airy already anchoring the regional gaming area in the Poconos; except that, as Bushkill's own expert acknowledged, Bushkill's proposed facility would be a less "attractive" anchor than Mount Airy.<sup>48</sup> In their market assessment, Christiansen Capital Advisors, LLC ("CCA") acknowledged that Category 2 facilities, with a greater number of slot machines and table games, "can accommodate more players at peak capacity" and "provide[] for a much wider choice of games than the 600 slot and 50 table limitations for a Category 3 [facility]."<sup>49</sup> CCA also concluded that "casinos, with a wider complement of gaming options are generally more 'attractive.'"<sup>50</sup> Awarding another less attractive anchor to the Poconos would also deprive Western Pennsylvania of any of the four licenses specifically intended to enhance tourism in different regions of the Commonwealth since the other three have already been awarded to the Poconos, Bethlehem and Valley Forge in Eastern Pennsylvania.

While Bushkill attempts to argue there is insufficient supply in this area, the actual economics for Mount Airy tell a different story. Mount Airy presently offers only about 2,500 slot machines and 72 table games;<sup>51</sup> one-half of the slot machines and approximately one-third of the table games authorized for Category 2 licensees. In fact, Mount Airy is a full 1,000 slot machines below its original Phase 1 design.<sup>52</sup> In addition, Mount Airy's revenue is significantly underperforming projections. During its application, the Board's Financial

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<sup>48</sup> Bushkill's Second Supplement to its Pre-Hearing Memorandum pursuant to Board Regulation 441a.7(i), Exhibit C, *An Analysis of the Fiscal Impacts of Adding a Category 3 Casino in the Eastern Pennsylvania Market*, prepared by Christiansen Capital Advisors, LLC, November 8, 2010, p. 9 (hereinafter, the "CCA Report").

<sup>49</sup> The CCA Report, p. 13.

<sup>50</sup> *Id.*, p. 9.

<sup>51</sup> Board's Weekly Revenue Reports, <http://www.pgcb.state.pa.us/?p=189> (visited on November 10, 2010).

Suitability Task Force projected that Mount Airy would generate approximately \$269.3 million (in 2005 dollars) in a stabilized year.<sup>53</sup> However, Mount Airy generated only approximately \$145.4 million in fiscal year 2010.<sup>54</sup> That Mount Airy is so significantly underperforming and has so much additional capacity to increase supply barely 15 miles away from Fernwood belies Bushkill's proposition that there is actually an insufficient supply in the Poconos.

In addition, it must be noted that New York State just entered into an agreement with a Mohican-tribe to build a casino (including both slots and table games) on 333 acres in Bridgeville, New York.<sup>55</sup> Just 43.5 linear miles from Bushkill,<sup>56</sup> and specifically designed to attract New York City residents, this new casino will create significant additional competition for gaming patrons in the Poconos region.

**VII. BUSHKILL'S "EXCEEDINGLY ROBUST" FINANCIAL PROJECTIONS ARE NOT SUBSTANTIATED IN ANY OF ITS THREE EXPERT MARKET ASSESSMENTS.**

Commissioner Ginty properly questioned Bushkill and its operator regarding the methodology used to reach Bushkill's projected \$513 slot win per position per day because:

The projections you've [Bushkill] given are, quite frankly, **exceedingly robust**, compared to the experience that other casinos in Pennsylvania, and specifically some of the casinos up in the --- you know, close to you in the Poconos area and northeast have. And you know, Sands, for one is a fairly mature operation. And I would think that they'd be pretty good at what they're doing. And, you know,

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(...continued)

<sup>52</sup> Mount Airy Adjudication, ¶ 152-53.

<sup>53</sup> *Id.*, ¶ 141.

<sup>54</sup> Board's Weekly Revenue Reports, <http://www.pgcb.state.pa.us/?p=189> (visited on November 20, 2010).

<sup>55</sup> James M. Odatto, "Paterson, Schumer Push Feds for Casino," *Albany Times Union*, November 23, 2010, <http://www.timesunion.com/default/article/Paterson-Schumer-push-feds-for-casino-826701.php>; Danny Hakim, "Paterson Is Set to Approve Deal on an Indian-Run Casino in the Catskills," *The New York Times*, November 16, 2010, <http://community.nytimes.com/comments/www.nytimes.com/2010/11/17/nyregion/17casino.html?scp=2&q=danny%20hakim%20casino&st=cse> (both articles attached hereto as Attachment 2).

<sup>56</sup> Linear miles is calculated on GPSVisualizer, <http://www.gpsvisualizer.com/calculators>.

they're showing, you know, the win per day per slots, you know, way below what you're projecting. (Bushkill Tr. 102:11-21 [Ginty]).

During his testimony, James Perry, Chairman of Isle of Capri agreed: "I've been in this business a little over 30 years and I do not remember a slot machine daily win per unit of over \$500 in my experience." (Nemacolin Tr. 84:9-12 [Perry]). He also raised the apt rhetorical question:

[T]he question that I would want to ask is what kind of hold percentage do you have to have on a slot machine so that it makes \$500 a day, and what type of experience are you providing for your customer if you have to tighten that machine down so that with your \$100 you're going to get 15 minutes of entertainment value? (Nemacolin Tr. 84:17-23 [Perry]).

However, Bushkill's methodology is cloaked in secrecy and confusion because Bushkill submitted a total of **three** expert market assessments, **none** of which projected \$513 slot win per position per day. Consequently, it is difficult to imagine how staff would be "comfortable that it understands the methodology that [Bushkill] used" for the purposes of comparison. (Bushkill Tr. 101:3-4 [Ginty]).

The three expert market assessments include Bushkill's original market study conducted by the Innovation Group,<sup>57</sup> a report by David West, Vice President of Marketing and Sales at the Pocono Mountains Visitors Bureau,<sup>58</sup> and a report by CCA. All of these reports conflict regarding the amount of revenue that should be projected from a gaming facility at Fernwood.

The Innovation Group Report projected that Bushkill's original 500 slot machine facility could have generated \$26,901,786 in total gaming win and "a win per machine per day in

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<sup>57</sup> Bushkill Application for a Category 3 license, *Gaming Resort Market Assessment: Fernwood Resort, Bushkill, Pennsylvania*, prepared by The Innovation Group, June 12, 2007 (hereinafter, the "Innovation Group Report"). The Innovation Group Report was prepared before the authorization of table games and, accordingly projects on the basis of the 500 slot machine facility that Bushkill originally proposed. *Id.*

<sup>58</sup> Bushkill's Pre-Hearing Memorandum pursuant to Board Regulation 441a.7(i), Exhibit H, *Gaming Market Assessment and Economic Impact Report*, compiled by David West, dated October 2010 (hereinafter, the "David West Report").

the range of \$143 to \$157 during the first five years of operation.”<sup>59</sup> In contrast, Mr. West simply asserts that the “Fernwood Casino is expected to generate \$107 million in gaming revenues” without any demonstration of how the figure is calculated.<sup>60</sup>

This is a stunning increase in projected revenue. The new projection is more than four times (400.19%) the Innovation Group’s initial projection. Some of that, of course, represents revenue from the 22 table games added to Bushkill’s proposed facility but the precise amount is unclear because Bushkill does not disclose its report or study actually projecting \$107 million in gaming revenues.<sup>61</sup> Equally stark is the more than three-fold increase in slot win per position per day from at most \$157 to \$513. The CCA Report, Bushkill’s third market assessment, splits the difference. It projects that the 500 slot machine and 22 table game facility will generate between \$88.5 to \$94.8 million in gaming revenue.<sup>62</sup>

At the licensing hearing, Bushkill presented Steven Snyder, Vice President of Corporate Development at Penn National Gaming, Inc., as an “expert witness with respect to the economic impact of the Bushkill facility.” (Bushkill Tr. 18:25-19:3 [Jones]). Mr. Snyder testified that he calculated the \$107 million in total gaming win and the \$513 slot win per position per day projections and that he “didn’t rely on any consultant’s work.” (Bushkill Tr. 31:2-32:6 [Snyder]).<sup>63</sup>

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<sup>59</sup> The Innovation Group Report, p. 39-40.

<sup>60</sup> The David West Report, p. 17.

<sup>61</sup> Nemacolin speculates that out of the \$107 million,  $\frac{3}{4}$  is generated from slot machines and  $\frac{1}{4}$  is generated from table games, because of a statement in the David West Report: “the new projected revenues for the casino when stabilized are approximately 3 times higher than those projected for a 500 slot facility in 2008.” David West Report, p. 17. Presumably, this is an indication that the slots win increased approximately three-fold and that the table games revenue represents the remainder of the increase.

<sup>62</sup> The CCA Report, p. 14.

<sup>63</sup> “What you see on the board there is our projection of that first-year stabilized revenue of \$107 million. The methodology which we utilized to arrive at that revenue number is similar, not identical but very similar to what we utilized back in 2006 and presented to this Board.” (Bushkill Tr. 32:4-9 [Snyder]).

Contrary to Board Regulation 441a.7(i)(4) and Director Lloyd's express instructions, Bushkill did not present any report, study or market assessment prepared by or relied upon by Bushkill's expert witness. Board Regulation 441a.7(i)(4) requires that "[i]f any person identified in [the Pre-Hearing Memorandum] will testify as an expert... [a] copy of the results or reports of any tests, experiments, examinations, studies or documents prepared or conducted by the expert or about which the expert will testify or which will be relied upon by the expert to render an opinion **shall** be attached to the [Pre-Hearing Memorandum]." 58 Pa. Code § 441a.7(i)(4) (emphasis added). Enforcing this requirement, Director Lloyd admonished all the applicants that:

[T]he purpose of the memoranda filed pursuant to 58 Pa Code §441a.7 is, first and foremost, to put all of the applicants on notice of what evidence will be presented in support of an applicant's application at the public hearing so that the other applicants can speak to the matters (if they so choose) with some degree of preparedness. In short, the memos are being provided to create an even playing field and limit the element of surprise.<sup>64</sup>

As Director Lloyd admonished, Bushkill's failure to disclose the results or reports relied upon by Bushkill's expert witness prejudiced the other applicants. Consequently, the other applicants have no information regarding the scope or methodology of the analysis leading to the \$107 million in total gaming win and the \$513 slot win per position per day projections; except that Bushkill conceded that this analysis did not project gaming revenues originating from either in-state or out-of-state. (Bushkill Tr. 76:9-77:8 [Snyder]). Without the notice required by Board Regulations, the other applicants also had no ability for their experts to review and critique the analysis leading to the \$107 million in total gaming win and the \$513 slot win per position per day projections; except for the general unreasonableness of a projected slot win per position per

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<sup>64</sup> A copy of Director Lloyd's correspondence is attached hereto as Attachment 3.

day drastically higher than any facility known to Isle of Capri Chairman James Perry. (Nemacolin Tr. 84:9-25 [Perry]).

In light of Bushkill's failure to follow the Board's requirement to disclose all expert reports in their Pre-Hearing Memorandum even after Director Lloyd's extension and the resulting prejudice to the other applicants, Nemacolin requests that the Board disregard Mr. Snyder's testimony to the extent it relates to "the economic impact of the Bushkill facility," the topic regarding which Bushkill offered Mr. Snyder as an expert, the \$107 million in total gaming win and the \$513 slot win per position per day projections and all additional testimony that relies on these projections.

**VIII. THE TESTIMONY PROFFERED BY INTERVENOR WASHINGTON TROTTHING ASSOCIATION IS INSUFFICIENT TO PRECLUDE NEMACOLIN'S LICENSURE.**

Washington Trotting Association ("WTA") has contested and intervened in Nemacolin's application on the grounds that a Category 3 facility at Nemacolin would allegedly have an adverse impact on revenues at WTA's Category 1 casino, the Meadows, which is located more than 56 miles by car from Nemacolin. As a threshold matter, the Board has previously considered and rejected a virtually identical argument from Greenwood Gaming and Entertainment that a Category 3 facility at the Valley Forge Convention Center would adversely impact Greenwood's Category 1 casino located 25 miles from Valley Forge. As the Board explained to the Pennsylvania Supreme Court in that context:

[I]t cannot be denied that Category 3 slot machine licenses were designed to increase the flow of tourism at well-established resort hotels in the Commonwealth and, in turn, boost said businesses and related ancillary services. **As a result, any argument attacking their financial impact on nearby casinos is unpersuasive.**<sup>65</sup>

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<sup>65</sup> Reply Brief of Respondent in *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Bd.*, No. 106 MM 2009 (Pa.), at 15 (emphasis added).

WTA has essentially ignored this fatal infirmity in its position. Indeed, its sole non-expert witness at the Nemacolin licensing hearing, WTA president Bill Paulos, effectively wrote the promotion of tourism out of the Act by contending that the Board must award the available Category 3 license exclusively to the applicant “who provides the most incremental income for the state.” (Nemacolin Tr. 175:13-175:21 [Paulos]). When asked by Commissioner Ginty “[w]hat happens to tourism and the other parts of that [legislative] language” under his narrow reading of the Act, Mr. Paulos responded dismissively that “tourism is great, and Nemacolin, listen, is a fine resort.” (Nemacolin Tr. 175:22-176:2. [Paulos])

Yet, even assuming that its position were not unpersuasive as a matter of law, WTA has otherwise failed to establish the existence or scope of the adverse impact that it alleges. Mr. Paulos did not testify to having any background in financial analysis. Nor did he suggest what dollar impact a Category 3 facility at Nemacolin would allegedly have on the Meadows. On the contrary, Mr. Paulos expressly **declined** “to speculate on what [the alleged] level of dilution for The Meadows would actually be.” (Nemacolin Tr. 167:13-167:14 [Paulos]).

Instead, Mr. Paulos simply purported to question various aspects of TMG’s methodology and conclusions. Without belaboring the point, TMG is a nationally recognized expert in casino financial analysis with a proven track record of accurate prognostications to the Board. (Nemacolin Tr. 62:25-64:8 [Mumphrey]). Additionally, the Board’s own Financial Investigations Unit has concluded that Nemacolin “is likely to maintain operational viability and maintain a steady level of growth.” (Nemacolin Tr. 194:18-194:20 [O’Neill]). Given this record, the self-serving testimony of WTA’s own president – who ignored the fundamental purpose of a Category 3 license and offered no qualifications to support his analysis – should give no pause to the Board.

**IX. IF AWARDED THE LICENSE, NEMACOLIN WOULD BE THE QUICKEST FACILITY TO OPEN ITS DOORS.**

Nemacolin will be able to open within approximately nine months of starting construction. Already providing an array of amenities unmatched by any of the other applicants, Nemacolin Woodlands Resort has an existing resort building, called the Wildside venue, perfectly suited for the proposed facility. Nemacolin intends to relocate the amenities presently in the Wildside venue in order to expand and renovate that venue for the proposed facility. As a result, the necessary improvements to open the proposed facility are limited. There are no issues with zoning, land use, parking, or utilities, as Nemacolin Woodlands Resort is almost entirely self-sufficient. Nemacolin need only add a traffic light and left turn lane at the intersection of State Route 40 and the entrance to the proposed facility.<sup>66</sup>

**X. CONCLUSION**

For all of the foregoing reasons, the Board should approve the Application and award to Nemacolin a Category 3 license for Nemacolin Woodlands Resort.

Dated: November 29, 2010

Respectfully submitted,



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<sup>66</sup> Woodlands Fayette, LLC Application for a Category 3 license, Appendix 41.



**Attachment 1**  
**Amenities Plan for Each Applicant**

# Woodlands Fayette, LLC ("Nemacolin")

## APPENDICES 32 AND 33

### AMENITIES PLAN AND FEE SCHEDULE

April 7, 2010

#### **I. INTRODUCTION**

The Amenities Plan and Fee Schedule is prepared in conjunction with the Gaming Area Access Plan (Appendix 34). The Gaming Area Access Plan sets forth how Woodlands Fayette, LLC, through its gaming manager, IOC-PA, L.L.C., will ensure that only persons permitted to enter the gaming area of the proposed facility are able to do so. A component of that plan is the requirement unique to Category 3 slot machine licensed facilities that only certain classes of individuals may qualify for access to the gaming area of the licensed facility. 4 Pa. C.S. § 1305. For more information on the plan to restrict access to the gaming area of the proposed facility in accordance with applicable law and regulations, please see the Gaming Area Access Plan (Appendix 34).

Two of the classes of patrons that qualify for access to the gaming area (subject to other restrictions described in the Gaming Area Access Plan) are:

- Participants in one or more of the resort amenities for non-de minimis consideration ("Amenity Patrons"); and
- Individuals holding a valid, Board-approved, seasonal or year-round membership ("Members").

4 Pa. C.S. § 1305; 58 Pa. Code §§ 441a.1 and 441a.23.

With respect to qualifying as an Amenity Patron, a person must pay "non-de minimis consideration," defined as "a payment of fair market value of at least \$10 per patron paid to the resort hotel for use of one or more amenities." 58 Pa. Code § 441a.1. So long as the person pays consideration in excess of the \$10 threshold to the resort hotel for use of one or more resort amenities, such person qualifies as an "Amenity Patron."

#### **II. SUMMARY OF CONTENTS**

The Amenities Plan and Fee Schedule sets forth the amenities for which persons will qualify for access to the gaming area of the licensed facility as Amenity Patrons. Woodlands Fayette, LLC, with the assistance of its gaming manager, IOC-PA, L.L.C., is presently implementing a verification system that will enable Amenity Patrons to easily demonstrate compliance with 4 Pa. C.S. § 1305 and 58 Pa. Code §§ 441a.1 and 441a.23 and gain access to the gaming floor. The amenities described below are those presently available at the Nemacolin Woodlands Resort that Woodlands Fayette, LLC anticipates will allow a purchasing individual to qualify as an Amenity Patron.

The Amenities Plan and Fee Schedule also sets forth the memberships that Woodlands Fayette, LLC proposes for Board approval at this time. Holders of these

memberships, subject to Board approval, would qualify for access to the gaming area of the licensed facility as Members. The memberships described below are presently available at Nemacolin Woodlands Resort. With its gaming manager, IOC-PA, L.L.C., Nemacolin Woodlands Resort is developing additional memberships that will cross-market the gaming venue with existing resort amenities, as well as new, value-priced memberships that are based on comparable hospitality and shopping member programs. When finalized, Woodlands Fayette, LLC will update its Amenities Plan and Fee Schedule and request approval from the Board.

### **III. QUALIFYING AMENITIES THAT SATISFY THE \$10 THRESHOLD**

#### **A. GOLF AMENITIES**

**Mystic Rock Golf Course.** Patrons of the Mystic Rock Golf Course pay a base rate for use of the greens based upon the time of the year and the time of the day. The base rate is \$165 (\$195 in peak season). After 2pm each day (3pm during peak season), Mystic Rock Golf Course charges a reduced rate of \$109. Patrons of the Mystic Rock Golf Course that are also registered overnight guests receive a discount of \$10. In addition, non-player patrons of the Mystic Rock Golf Course pay a \$30 non-player cart fee to accompany golfers along the course.

**The Links Golf Course.** Patrons of the Links Golf Course pay a base rate for use of the greens based upon the time of the year and the time of the day. The base rate is \$65 (\$84 in peak season). After 2pm each day (3pm during peak season), Links Golf Course charges a reduced rate of \$45. Patrons may play 9 holes of the Links Golf Course during the season for \$45. Non-player patrons of the Links Golf Course pay a \$30 non-player cart fee to accompany golfers along the course.

**Nemacolin Woodlands Golf Academy.** Patrons of the Nemacolin Woodlands Golf Academy can purchase any of a number of services individually or in a packaged combination. These include:

- Private instruction: \$100 / person;
- Semi-private lessons: \$150 / two people; \$180 / three people; \$200 / four people;
- Private playing lesson: \$250 / person; and
- Club fitting: \$75 / person.

#### **B. SALON & SPA AMENITIES**

**The Woodlands Spa at Nemacolin Woodlands.** Salon & spa amenities include massages, hair care, body rituals and fitness services. These services are available individually and in packages. With the exception of individual nail repair (\$5 per nail), all services at the Woodlands Spa range in price from \$15 (polish changes) to \$295 (Kila Body Work, a type of massage lasting 110 minutes). Packages range in price from \$225 to \$479. Please see the Woodlands Spa brochure provided at Appendix 33 of Woodlands Fayette, LLC's application for a detailed listing of service rates and packages.

### **C. RESTAURANT AMENITIES**

**Lautrec.** Lautrec is a nationally-recognized fine dining restaurant having been awarded both the Mobil Travel Guide Five-Star and AAA Five-Diamond awards for 2009. Featuring Modern American Cuisine, Lautrec's Tasting Menu format sets the stage for a world-class dining experience. A sample menu for Lautrec is provided at Appendix 40 of Woodlands Fayette, LLC's application. The cost of dining at Lautrec is approximately \$100 per person with wine pairings.

**Aqueous.** Aqueous is a AAA Four-Diamond steakhouse restaurant that is also a multiple recipient of Pittsburgh Magazine's Top 25 Restaurants. The menu focuses on locally raised beef, lamb, pork and chicken. Patrons can enjoy breakfast, lunch or dinner at Aqueous. A sample dinner menu for Aqueous is provided at Appendix 40 of Woodlands Fayette, LLC's application. The cost of dining at Aqueous is approximately \$30-40 per person.

**The Tavern.** The Tavern is fashioned after a traditional English pub. Patrons can dine in the bar, restaurant or sidewalk-cafe near the resort's 8,500-gallon free-standing saltwater aquarium. A sample menu for the Tavern is provided at Appendix 40 of Woodlands Fayette, LLC's application. The cost of lunch and dinner at the Tavern is approximately \$20 per person.

**Elements Cafe.** The Elements Café is located at the workout facility inside the Woodlands Spa. It features menu items for a healthy lifestyle, including fruit-smoothies, homemade granola, muffins, salads and sandwich wraps. A listing of the menu items available at the Elements Café is provided at Appendix 40 of Woodlands Fayette, LLC's application. Menu items cost patrons approximately \$10 or more per person.

**The Gazebo.** The Gazebo is located across from the Links Pro Shop on the Links Golf Course and offers a daily breakfast and lunch menu. It also features spectacular views of the mountains of Pennsylvania, Maryland, and West Virginia. It is open April through October, weather permitting, and serves a casual grill lunch. A listing of the menu items available at the Gazebo is provided at Appendix 40 of Woodlands Fayette, LLC's application. Menu items cost patrons approximately \$10 or more per person.

**Mulligans.** Mulligan's provides a quick stop on Mystic Rock Golf Course between the 9th and 10th holes for those that need a break from the course. Mulligan's is a half-way house for golfers on the go. Sit down dining is not permitted. It is open April through October, weather permitting. Mulligan's also serves as a location for private parties and banquets year round. Menu items cost patrons approximately \$10 or more per person.

**Orville's Pub.** Orville's Pub offers sandwiches and burgers in a pub atmosphere at the Shooting Academy. The bar provides alcoholic drinks to shooters who have finished shooting for the day. Please note that no one is permitted to shoot after being served alcohol. Menu items cost patrons approximately \$10 or more per person.

**Amber Lounge.** Amber Lounge is located in the lobby of the Falling Rock boutique hotel and adjacent to Aqueous restaurant. It is a bar and lounge that serves the lobby

area and the outside Sunset Terrace at Falling Rock, open May through October, weather permitting. Menu items cost patrons approximately \$50 per person.

**The Sunset Terrace.** Overlooking the 18th hole of the Mystic Rock Golf Course, the Sunset Terrace offers outdoor dining with an outside bar. It is open May through October, weather permitting. A sample menu for the Sunset Terrace is provided at Appendix 40 of Woodlands Fayette, LLC's application. Menu items cost patrons approximately \$25 per person.

**Hungry Moose Café.** The Hungry Moose Café is located inside the Sundial Ski Lodge. Operating during ski season, the Hungry Moose Café offers soups, sandwiches, and snacks in a food-court style fashion. Menu items cost patrons approximately \$10 or more per person.

**The Cigar Bar.** Located in the Chateau Lafayette and adjacent to the resort's Cigar Shop, the Cigar Bar features bourbons, scotches and cognacs as well as an array of cigars. The Cigar Bar is reserved for guests over the age of 21 and permits smoking 24/7. Menu items cost patrons approximately \$10 or more per person.

**Lobby Lounge.** The Lobby Lounge offers a menu of fine cordials and cocktails in a relaxing atmosphere inside the Chateau Lafayette. Menu items cost patrons approximately \$10 or more per person.

**Tea Lounge.** Located in the Chateau Lafayette and adjacent to the Lobby Lounge, the Tea Lounge offers traditional English Tea. Menu items cost patrons approximately \$10 or more per person.

**Académie du Vin.** Wine tastings are offered each Friday at 4:00 p.m. in the resort's state-of-the-art Académie du Vin (a wine school). Tastings are led by one of Nemaquin's expert sommeliers. All wine tastings are reserved for guests 21 years and over. Menu items cost patrons approximately \$10 or more per person.

#### **D. OUTDOOR SPORTS AMENITIES**

**Shooting Academy.** The Shooting Academy is one of the nation's top sporting clays facilities. It features 35 sporting clay stations spread across three courses, towers and a five stand pavilion with an integrated Wobble Trap Field. Services at the Shooting Academy include:

- Novice hourly instruction: \$140 / person (with equipment) and \$55 / person (without equipment);
- Intermediate instruction: \$80 / person (without equipment); and
- Shooting packages (targets and/or equipment): minimum \$25 (without equipment) and \$40 (with equipment).

**Orvis® Fly Fishing Center.** The Orvis® Endorsed Fly Fishing Center and Expedition at Nemaquin Woodlands Resort is a gateway to some of the finest fly fishing streams and creeks in the Eastern United States. The 7,000 square foot lodge is shared with the Shooting Academy. Half and Full-Day Guided Trips, Fly Fishing Casting and Fly Tying Lessons are

available to patrons at a cost of at least \$30 per person for lessons and \$100 per person for access.

**TOMCAR Tactical Training Center.** Patrons can enjoy driving off-road throughout the resort property using the TOMCAR, an all-terrain vehicle. Base rates are \$200 for up to 3 persons (approximately \$66 / person) for one-hour instructional trips and \$80 for up to 3 persons (approximately \$26 / person) for half-hour demos.

**Wildlife Academy.** The Wildlife Academy at Nemacolin Woodlands Resort offers patrons an opportunity to share some of Nemacolin's space with tigers, lions, wolves and hyenas. Services include trail rides (\$75 / person) and safari tours (\$60 / person).

**Snow Sports Amenities.** Nemacolin Woodlands Resort seasonally features the 25-acre Mystic Mountain. On the slopes, patrons can enjoy downhill skiing or snowboarding or take lessons from skilled staff. Elsewhere at Mystic Mountain, patrons can try cross-country skiing or experience dog sledding. Basic adult rates for lift tickets or the other snow sports range from \$15 per person (snow tubing) to \$38 (day pass lift ticket) to a maximum of \$125 (for the first dog sledding rider; \$25 for a second rider). A copy of the 2009-2010 Ski Season brochure is provided at Appendix 33 of Woodlands Fayette, LLC's application.

**Paradise Pool.** The paradise pool is a summertime hangout where patrons can enjoy a cocktail or a sandwich in the sun. It is located behind the Woodlands Spa and adjacent to the Tavern and is open April through September, weather permitting. A sample menu is provided at Appendix 40 of Woodlands Fayette, LLC's application. Menu items cost patrons approximately \$10 or more per person.

**Adventure Center Activities.** Several recreational amenities are available only with the purchase of a Weekend Adventure Pass at the cost of \$15 per person. These include the Fallingbrook miniature golf course, bike rentals, disc golf, and fat bird express. Additional recreational amenities are available at a discount with the purchase of the pass, such as the ropes course, paintball and archery.

#### **E. PET SPA AMENITIES**

**Nemacolin Woodlands Pet Resort & Spa.** Pet spa amenities include lodging, grooming, training and daycare. Lodging for cats or dogs is available at a cost from \$15 to \$55 depending on the size and number of the cats or dogs. Other services are available at a cost of approximately \$10 or more per patron.

#### **IV. CURRENT PROPOSED QUALIFYING MEMBERSHIPS\***

**Individual and Family Links Golf Season Pass.** This membership is valid for up to one calendar year and always expires before the start of the following golf season, March

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\* With its gaming manager, IOC-PA, L.L.C., Nemacolin Woodlands Resort is developing additional memberships that will cross-market the gaming venue with existing resort amenities, as well as new, value-priced memberships that are based on comparable hospitality and shopping member programs.

31<sup>st</sup>. The amenities covered by this membership include benefits at various resort amenities, including Golf, Salon & Spa, and the Restaurants at the Nemacolin Woodlands Resort. At a cost of \$1,500 for individuals and \$2,650 for families, this membership entitles a patron to receive the benefits listed immediately below. Consequently, any individual member and any two adults belonging to a family membership each qualify as a Member. In addition, guests of any such member may also participate in the Golf Amenities for a \$39 guest fee.

<u>Benefits</u>
Daily greens fees
Cart fees Monday – Friday
Practice balls prior to tee time
Locker in Links clubhouse
20% discount at applicable retail outlets
10% discount at Resort eateries
10% discount at Woodlands Spa
10% discount on golf instruction
Guest fees of \$39
30 day advance tee time

**Mystic Rock Corporate Season Pass.** This membership is valid for up to one calendar year and always expires before the start of the following golf season, March 31<sup>st</sup>. The amenities covered by this membership include benefits at various resort amenities, including Golf, Salon & Spa, and the Restaurants at the Nemacolin Woodlands Resort. At a cost of \$20,000, this membership entitles a patron to receive the benefits listed immediately below. Consequently, up to 14 adults registered under the corporate membership each qualify as a Member.

<u>Benefits</u>
4 golfers daily on either Mystic Rock or Links golf courses
Use of practice center prior to tee time
4 personalized golf lockers at Mystic Rock locker room
20% discount on lodging
20% discount at retail outlets
10% discount at Resort eateries
10% discount at Woodlands Spa
10% discount on golf instruction
30 day advance tee time
Complimentary re-gripping services

**The Shooting Academy Preferred Membership.** This membership is valid for one calendar year. The amenities covered by this membership include benefits at various resort amenities, including at Outdoor Sports (specifically the Shooting Academy) and the Restaurants at the Nemacolin Woodlands Resort. At a cost of \$100 for individuals, \$400 for families, \$1,000 for groups and \$2,000 for corporate members, this membership entitles a patron to receive the benefits listed immediately below. Consequently, any individual member, any two adults belonging to a family membership, any 10 adults belonging to a group membership and any 20 adults belonging to a corporate membership each qualify as a Member.

Benefits

Membership rates (25 targets - \$10; 50 targets - \$20; 75 targets - \$30; 100 targets - \$40; extra targets \$0.40 per)
Self trapping privileges after completion of "member safety instructional session"
Complimentary gun rental
15% discount on Shooting Academy apparel and accessories
15% discount at retail outlets
15% discount on lodging rates
15% discount at Resort eateries

**Mystic Mountain Season Passes.** This membership is valid for no longer than one calendar year and expires before the start of each ski season. The amenities covered by this membership include benefits at Outdoor and Snow Sports amenities. At a cost for adults of \$99 (if purchased on December 15<sup>th</sup> or earlier) or \$129 (if purchased after December 15<sup>th</sup>), this membership entitles a patron to free, daily lift tickets and discounts on equipment rentals, snow tubing, and cross country skiing.



# Penn Harris Gaming, L.P.

## APPENDIX 32 – PROPOSED AMENITIES PLAN

The following are the amenities available at the Holiday Inn Harrisburg West:

	<u>Rate Schedule / (Average Expenditure)</u>
<u>Hotel</u> .....	\$60 - \$189 / (\$82)
<u>Restaurants</u>	
Legends Sports Bar and Grill.....	\$ 9 - \$29 / (\$13)
<u>Lounge/Entertainment</u>	
Hardware Bar .....	\$10 - \$45 / (\$30)
Carlisle Pike Saloon .....	\$5 - \$35 / (\$22)
<u>Sand Volleyball</u> .....	\$20 - \$40
<u>Picnic Grove Set-Ups</u> .....	\$10 - \$ 15
<u>Massage</u> .....	\$20 - \$ 150
<u>Meetings, Convention and Events</u> .....	Varies depending upon size and specific requirements of event

Applicant also intends to regularly offer promotional events, such as themed dining events, where a fee will be charged.

As the above demonstrates, patrons of these amenities will in most cases exceed the non-de minimis consideration threshold (\$10) required under the Gaming Board's Regulations and will be deemed "patrons" under the Gaming Act and Regulations.

Applicant also intends to offer seasonal and/or year-round memberships to the various amenities offered at the hotel, including:

- Fitness center
- Indoor/Outdoor pools
- Sand Volleyball
- Miniature Golf
- Baseball/Softball

We will provide the details of such memberships to the Gaming Board for review and approval.

In addition, the hotel offers 16,000 square feet of flexible meeting and event space for conventions, banquets and weddings.

MS

# Mason-Dixon Resorts, L.P.

MASON-DIXON RESORTS, L.P.  
CATEGORY 3 APPLICATION AND  
DISCLOSURE INFORMATION FORM  
APPENDIX 32

## APPENDIX 32

### PROPOSED AMENITIES PLAN

In order for a Category 3 applicant to qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer a complement of amenities characteristic of a well-established resort hotel. See 58 Pa. Code §441a.23. The PGCB, through its regulations have defined amenities as follows:

"Ancillary activities, services or facilities in which a registered guest or the transient public, in return for non-de minimis consideration, may participate at a resort hotel, including, but not limited to:

- (i) Sports and recreational activities and facilities such as a golf course or golf driving range, tennis courts or swimming pools.
- (ii) Health spa.
- (iii) Convention, meeting and banquet facilities.
- (iv) Entertainment facilities.
- (v) Restaurant facilities."

See 58 Pa. Code §441a.1

In satisfaction of the above requirement, Mason-Dixon Resorts, L.P. (the "Applicant") will offer the following amenities at its licensed facility:

#### **1. Conference Center Facilities:**

The Applicant's conference center is South Central Pennsylvania's largest hotel conference facility with over 76,000 square feet of available indoor conference space. Meeting planners can select with confidence for any of their needs, from business meetings, seminars, training sessions, banquets, commercial exhibits, or even full scale conventions. The facilities are all state-of-the-art which includes a ballroom that can be transformed from a simple dinner meeting to a high tech multi-function training facility or a large concert hall.

For training purposes, the high-speed internet access will bring an organization's information into the training area in either one or both of the large ballrooms. With an integrated network and fiber optic systems, the Applicant has the capabilities of supporting up to 200 computer workstations with high-speed broadband Internet access simultaneously. Further, with the 4,000-watt Crest Audio System, patrons can conduct meetings in any conference rooms, via the Shure UHF wireless microphones. The public address system is equipped with audio connections to allow use of one, two, or all banquet rooms at one time.

The cost to utilize the conference facilities will vary based upon the type and size of the event. However, the minimum per person cost for a conference event is \$10.00, with rates increasing based on the nature of the event.

MASON-DIXON RESORTS, L.P.  
CATEGORY 3 APPLICATION AND  
DISCLOSURE INFORMATION FORM  
APPENDIX 32

**2. Swimming Pool and Jacuzzi:**

The resort has an indoor tropical courtyard with an opening sky dome that houses an indoor swimming pool and Jacuzzi. The spacious pool and open cabana style seating area offers patrons a comfortable atmosphere where they can relax without the worry of exterior weather conditions. The pool and Jacuzzi are available for use all year round. Overnight guest of the resort can use the pool at no additional cost while daily patrons are subject to a \$10.00 entrance fee or annual membership.

**3. Exercise Facility:**

Resort guests have access to an on-site exercise facility with free weights, nautilus equipment, a dry sauna, and a variety of cardiovascular exercise machines. The exercise facility is open 24 hours a day, 7 days a week. Daily patrons may utilize the exercise facility for a \$10 entrance fee or annual membership.

**4. Restaurants:**

The resort offers two distinct restaurants which provide its patrons with a variety of culinary options. "The Marketplace" restaurant offers patrons a relaxed and casual atmosphere where they can dine on sandwiches, soups, salads, coffee, and desert or simply enjoy a snack. The Marketplace also offers the option of take-out meals, gifts and souvenirs.

Richard's is the resort's fine dining option which is decorated in a French country motif and is well-known for its American-Continental fine cuisine, specializing in steaks, seafood, and Italian entrees. Richard's extensive menu and overall fine dining experience has made it a favorite stop for guest and visitors of the resort for many years.

**5. Lounge and Entertainment Bar:**

The "Lounge" at the resort is a full scale sports and entertainment bar. It offers widescreen televisions, plush seating, a wood burning fireplace and a state-of-the-art sound system. The Lounge provides patrons with a place to watch their favorite sporting or entertainment event, enjoy a relaxing beverage or have a bite to eat.

**6. Business Center:**

The resort offers patrons access to a state-of-the-art business center. The business center has a number of private individual work stations, internet access (including a wireless option), private phone access, copiers, printers, scanners and a fax machine. Patrons may utilize the business center for a daily entrance fee of \$10.00 per person.

MASON-DIXON RESORTS, L.P.  
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**7. Golf and Ski Packages:**

The Applicant has unveiled its "Mason-Dixon Pass" program, which will actively promote other area tourist destinations to guests of the resort. Two inaugural members of the Mason-Dixon Pass program are the Links at Gettysburg and Ski Liberty Mountain Resort. The Mason-Dixon Pass is a cross-marketing effort that will provide tourists with special information and promotions from area tourist spots.

The Links is a "4 1/2 Star" rated facility by Golf Digest and a "Must-Play" by Golfstyles. Created by The Klein Family Partnership, this European-style links course plays 6,979 yards from the tips, with a 73.9 rating and 140 slopes, making it an exciting challenge for low handicappers. Conveniently located in South Central Pennsylvania, just north of the historic Mason-Dixon Line and Maryland state border, The Links is an easy 35-minute drive from Frederick, Md., 50 minutes from Harrisburg, Pa., 60 minutes from Baltimore, Md., and 90 minutes from Washington, D.C. For more information, see: [www.thelinksatgettysburg.com](http://www.thelinksatgettysburg.com).

Nestled in Carroll Valley near the scenic Catoctin Mountains, Ski Liberty is located just 8 miles southwest of Gettysburg and 5 miles north of Emmitsburg, MD, and is convenient to the Baltimore, Maryland and Washington, DC metro areas, as well as all of South Central Pennsylvania. Located on 275 beautiful acres, the resort offers over 100 acres of skiing, snowboarding and snow tubing trails. For more information, see: [www.skiliberty.com](http://www.skiliberty.com).

**8. Lake Access and Running Trails:**

Patrons of the resort will have access to the resort's 14 acre lake. Patrons can use the lake for swimming, paddle boating, water sports, fishing or simply relaxing. Additionally, there are extensive walking/running trails which surround the lake and extend throughout the property grounds. Lake access will be provided to patrons upon payment of \$10.00 per person fee or as part of an annual membership.

**9. Camp and Trailer Grounds:**

The resort operates a separate camp and trailer grounds, which are located on the northern border of the resort's lake. The grounds offer areas for individual camping experiences or locations where trailers may be placed for overnight or extended stays. Patrons may utilize the camping and/or trailer grounds for a \$10.00 per person fee or annual membership.

**10. Tennis Courts and Outdoor Pavilion:**

As part of its nearly 150 acre parcel of land, the resort also maintains outdoor tennis courts and a pavilion entertainment space, which patrons may utilize for a fee of \$10.00 per person or as part of an annual membership.

The amenities fee schedule is set forth at Appendix 33 of this Application.

# Bushkill Group, Inc.

## Appendix 32

Fernwood Hotel & Resort offers an extensive list of year-round resort activities. Facilities include an 18 hole par 71 golf course, a Winter Fun Center, several venues that present live entertainment including nationally touring acts, four themed restaurants, a food court with Carvel, Pizza Hut and Cinnabon, festival events on the Great Lawn, special events in the Astor Room, spa services, and daily planned activities that include trips to outlet shopping centers, wolf preserves, environmental centers, pottery outlets and excursions to Philadelphia, New York and Atlantic City. Fees to participate in the amenities range in price and meet the non-de minimus requirements set by the Gaming Board. A sample of amenity and usage fee rates follows.

### Fernwood Hotel & Resort Amenity Usage Fees

	Midweek	Weekend/Holiday
Snowtubing	\$13	\$24
Season All You Can Slide Pass - <i>Valid midweek and weekends after 6 pm</i>	\$150	\$150
Horseback Riding	\$25	\$25
Golf	\$39	\$48
Golf Season Pass - 12 Rounds	\$360	\$360
Resort Entertainment		
Weekly Resort Acts	\$10	\$10
National Acts	free to overnight guests \$15 - \$65	free to overnight guests \$15 - \$65
Game Zone EZ Cards	Starting from \$10	Starting from \$10
Paddleboats	\$10/15 min	\$10/15 min
Special Events Example - <i>a variety are offered throughout the year</i>		
Scottish/Irish		\$12 Adults
Wine Festival		\$12 Adults
Delaware River Float Trips	\$26/pp	\$29/pp
Paintball	\$25	\$25
Daily Activities	\$10 - \$20	\$10 - \$20
Household and seasonal crafts		
Tie-Dye Wear		
Fishing Derby		
Massage	\$35 - \$60	\$35 - \$60
Fitness Center	\$10 non-guest fee	\$10 non-guest fee
Daily Activities Trips - Pottery, Wolf Preserve	\$10 - \$25	\$10 - \$25
Bus Trips - NY, AC, Phil	\$65	\$65
Yearly		
Facility Dues	\$611 - \$766	

## **Attachment 2**

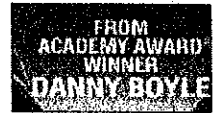
### **Media Coverage of Forthcoming Casino in Bridgeville, New York**

James M. Odatto, "Paterson, Schumer Push Feds for Casino." *Albany Times Union*, November 23, 2010, <http://www.timesunion.com/default/article/Paterson-Schumer-push-feds-for-casino-826701.php>;

Danny Hakim, "Paterson Is Set to Approve Deal on an Indian-Run Casino in the Catskills." *The New York Times*, November 16, 2010, <http://community.nytimes.com/comments/www.nytimes.com/2010/11/17/nyregion/17casino.html?scp=2&sq=danny%20hakim%20casino&st=cse>

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November 16, 2010

## Paterson Is Set to Approve Deal on an Indian-Run Casino in the Catskills

By DANNY HAKIM

ALBANY — Gov. David A. Paterson is poised to sign off on an Indian-owned casino development project in the Catskills, state officials said Tuesday, opening the door to the state's first full-fledged casino in close proximity to New York City.

The pending agreement is with the Stockbridge-Munsee, a Mohican tribe based in Wisconsin that traces its roots to New York and has been pursuing a casino in Sullivan County for years.

The casino would be 90 miles northwest of the city, in Thompson, featuring table games in addition to the electronic gambling machines offered at nearby facilities.

The development comes as a major surprise late in Mr. Paterson's administration, since the recent discussion about casinos has focused on tribes based in New York, particularly the Shinnecock tribe in the Hamptons, which recently won a long battle for federal recognition.

Officials in Sullivan County hailed the news, but one major New York tribe, the Oneida, reacted with dismay. Government watchdogs raised concerns that the talks had apparently been conducted in secret.

The project would still require federal approval; state and local officials said they were confident they had already cleared most of the necessary hurdles. As part of an agreement with the state, the tribe will settle a land claim suit in Madison County in central New York, and receive an acre of land as part of the settlement, a person with knowledge of the arrangement said, speaking on the condition of anonymity because the deal had not been made final.

Securing a foothold in New York is aimed at helping the tribe win federal approval to build a casino in Sullivan County, though federal regulators have long frowned upon casinos proposed outside of reservations.

The tribe has also been negotiating a compact with the state that would give \$15 million a year to Sullivan County and give the state a percentage of casino revenue, a key component of winning state and federal approval. The State Legislature would also have to approve a tribal compact.

"The Paterson administration is working to reach an agreement with the Stockbridge-Munsee Community, Band of Mohican Indians; the secretary of the interior; and a number of local governments to resolve a longstanding land claim," Jessica Bassett, a spokeswoman for the governor, said in a statement on Tuesday. "This agreement would clear the way to bringing much needed economic development to Sullivan County."

Senator Charles E. Schumer, Democrat of New York, said in his own statement that the deal "would be a huge boost for the economy that will include job growth and tourism, in a region that has been struggling for decades to get back on its feet."

At least one state tribe, however, is not celebrating. Mark Emery, a spokesman for the Oneida Indian Nation, said, "We, and presumably every other Indian nation, were surprised to learn that the State of New York would invite an out-of-state tribe into the state to conduct gaming, which means that all of the profits will be drained from New York."

The Oneida run the Turning Stone casino, which is between Syracuse and Utica, and have had poor relations with the Stockbridge-Munsee. The tribes have had conflicting land claims.

"The idea that the state was settling a Stockbridge land claim is laughable," Mr. Emery said, "as the claim relates to Oneida Nation homelands, and nobody honestly believes the Stockbridge ever had a legitimate claim here."

The Stockbridge-Munsee did not return a call for comment. The office of Governor-elect Andrew M. Cuomo also declined to comment; Patrick E. Brown, who was a top aide to Gov. Mario M. Cuomo, played a central role in arranging the deal.

While there is already a casino in Yonkers and one being developed at the Aqueduct racetrack



in Queens, both are technically racinos — they are attached to horse tracks and feature video lottery terminals, but not table games.

The casino envisioned for Thompson would be a full casino with table games, like poker and blackjack, a development that would quite likely draw business from casinos in Atlantic City and Connecticut, as well as Turning Stone.

Anthony P. Cellini, the supervisor of Thompson, said the deal could revitalize the Catskills. “We were once the Northeast’s tourism capital, and this could once again bring that back to this area,” he said.

Several tribes have been trying to build casinos in the Catskills for years, and the Paterson administration has said previously that it was open to building as many as three casinos in the region to generate jobs and revenue.

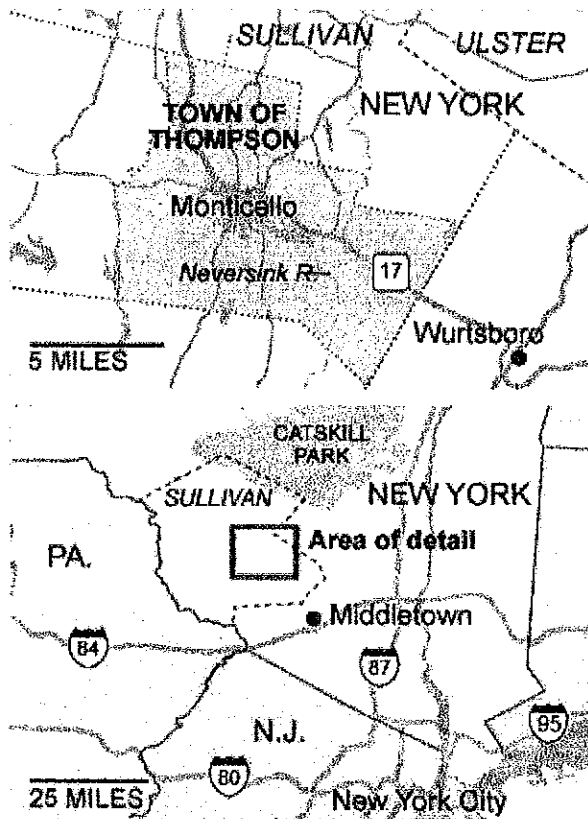
But the Stockbridge-Munsee tribe has already bought land in Sullivan County for its casino and is several years along in its efforts at winning approval. A key facilitator of the deal has been Mr. Brown, a lobbyist who once negotiated with Indian tribes on behalf of former Governor Cuomo’s administration. Mr. Brown represents the developer working with the Stockbridge-Munsee, Trading Cove New York, L.L.C., on the casino project. He declined to comment.

Blair Horner, legislative director of the New York Public Interest Research Group, said the deal raised eyebrows, particularly coming on the heels of a scandal over bidding for the Aqueduct racino. “The negotiations were conducted in secret,” he said, adding, “The administration should have bent over backwards to have made this process as open as possible.”

*This article has been revised to reflect the following correction:*

***Correction: November 22, 2010***

*An article on Wednesday about the Paterson administration’s plan to bring a casino to the Catskills referred imprecisely to the proximity of the proposed casino to New York City. It would not be the closest casino with table games to Manhattan; some casinos in Pennsylvania that recently added table games are slightly closer, though they are farther away from other parts of New York City.*



## Paterson, Schumer push feds for casino

By JAMES M. ODATO Capitol Bureau

Published: 12:27 a.m. , Tuesday, November 23, 2010

ALBANY -- Gov. David Paterson and Sen. Charles Schumer on Monday promised to "pressure" federal agencies to approve a massive casino project aimed at filling one of three slots for gambling emporiums in the Catskills approved by the state Legislature in 2001.

Believing they've hit on a way to get the Department of Interior and the Bureau of Indian Affairs to go along, the Stockbridge-Munsee Band of Mohicans and Paterson signed a land claim settlement Monday morning. The Wisconsin-based tribe ended its claim to almost 24,000 acres in Madison County, and now wants the right to build a casino on 333 acres in Sullivan County in exchange.

The project requires federal government to place the 333 acres in trust for the tribe, allowing construction of a Las Vegas-style casino. The property in the Town of Thompson has been held the past 11 years by the tribe's casino team.

"I will use what clout I have in Washington to make them say yes," said Schumer, who joined Paterson at the afternoon announcement in Monticello. He said even though the Interior Department has blocked casino proposals outside of commuting distance from reservation territories, this deal is different because it ends litigation.

Robert Batson, a federal Indian law instructor at Albany Law School, said the plan is logical. "It's a legal strategy that should work," he said. "But you may be running into a culture at Interior that seems to not favor off-reservation casinos."

Paterson said the casino will be an economic engine to help fuel the state treasury. "We have got to find revenue; we are in a revenue crisis," he said.

The project has been in the planning stages for several years. The tribe and its partners Trading Cove Associates -- which helped develop Connecticut's Mohegan Sun casino -- have done environmental impact statements and lobbied in Albany and Washington for nearly a decade. It's the most mature of various gambling proposals for the Catskills.

The Legislature approved up to three Native American casinos in the Catskills in 2001 as part of a broad escalation of gambling in New York to improve state finances after the 9/11 attacks. A series of projects have advanced and failed for various reasons, including tribal politics, disagreements in the Legislature and federal Indian gaming policies.

The Stockbridge-Munsee signed a contract with the Paterson administration Monday afternoon that promises the state a cut of slot machine revenues. That cut starts at 18 percent and grows to 25 percent after five years, a formula similar to that found in deals signed by the Mohawk and Seneca tribes, which already have casinos.

"The last 10 years have been a roller coaster ride filled with high expectations and deep disappointment," Stockbridge leader Kim Vele said. "We need all of you to make sure that Washington knows that our settlement will lead to the economic revitalization of the Catskills, (and) will provide thousands of jobs in Sullivan County and millions of dollars in revenue to the state and local governments."

The project site is off Route 17 near Exit 107 in Bridgeville. Some environmental groups have objected to the project because the casino and an accompanying hotel would be near the Neversink River.

Leaders of the Oneida Indian Nation, which contested the Madison County land claim of Vele's tribe, complained that the "sham, 11th-hour" deal with Paterson was negotiated secretly. The Oneida run the oldest casino in New York, Turning Stone in Verona, which entered an agreement with the administration of former Gov. Mario Cuomo that allows it to escape revenue sharing.

Reach Odato at 454-5083 or [jodato@timesunion.com](mailto:jodato@timesunion.com).

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**Attachment 3**

**Correspondence from Director Lloyd to All Applicants Regarding Disclosure of Expert  
Reports in the Pre-Hearing Memoranda**

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**From:** Lloyd, Linda (PGCB) [lilloyd@state.pa.us]  
**Sent:** Tuesday, October 19, 2010 2:31 PM  
**To:** Michael SKLAR; 'jdonnelly@levinestaller.com'; Jones, Marie J.; 'Schrier@BlankRome.com'; Fabius, Michael D. (Phila); King, Jr., Adrian R. (Phila)  
**Cc:** Sherman, Richard (PGCB); Cook, Stephen (PGCB); Drayton-Brown, Alta (PGCB); Wanich, Lyndsey (PGCB)  
**Subject:** Pre-Hearing Memorandum filed Pursuant to 58 Pa. Code 441a.7

Counsel,

As you are aware, each of the four Category 3 slot machine licensees' prehearing memoranda, filed pursuant to 58 Pa Code §441a.7, has been received by the Office of Hearings and Appeals, and has been served upon each of the other applicants. A cursory review of some of the memoranda shows that not all appear to clearly disclose certain information, perhaps citing the information as a confidential portion of the application or indicating that the information will be forthcoming at some later time.

As I am sure you are all aware, the purpose of the memoranda filed pursuant to 58 Pa Code §441a.7 is, first and foremost, to put all of the applicants on notice of what evidence will be presented in support of an applicant's application at the public hearing so that the other applicants can speak to the matters (if they so choose) with some degree of preparedness. In short, the memos are being provided to create an even playing field and limit the element of surprise.

Please be advised that the withholding of information, documents and evidence from the prehearing memoranda, with the result that substantive information is not readily discernable by a reader of the memoranda, may result in that information being excluded from presentation during the upcoming public licensing hearings. In short, substantive evidence should not be heard by the other applicants for the first time at the upcoming hearings. Any evidence you intend to present should be outlined in your prehearing memorandum and, if applicable, attached as an exhibit to same. If an exhibit has already been made public on the Board's website, there is no need to attach the exhibit. Please simply state that the document is available on the website.

In light of the forgoing, please allow this email to serve as formal notice that each of the applicants now has until 9:00 AM on Thursday, October 21, 2010 to submit, and serve on all other applicants and parties, a revised pre-hearing memorandum, as noted above. Additionally, exhibits must be attached and not simply referred to, as stated above.

Please do not simply supplement what has been filed. If you intend on revising your submission, make an entirely new submission and simply entitle it as "Revised."

Finally, please note that an applicant may still redact or not provide information in its memorandum which is rightfully entitled to the Pennsylvania Race Horse Development and Gaming Act's confidentiality protections. If same is done, it simply means that the evidence cannot thereafter be heard publicly at the upcoming hearings.

Linda S. Lloyd  
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Pennsylvania Gaming Control Board  
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Harrisburg, PA 17110  
717.265.8051 (work)  
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11/29/2010

**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2010, I caused copies of the foregoing Post-Hearing Brief to be served via e-mail upon the following:

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Chief Counsel  
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Harrisburg, PA 17106

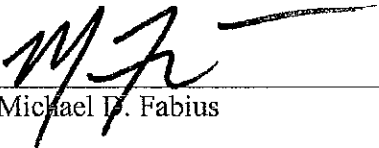
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